

Testimony for Senate hearing on Current Insurance Discretionary Authority Clauses.

May I share with you today, the impact of Insurance Discretionary Authority Clauses. And propose a solution to improve legislation.

My name is Mike Capener from Utah County. You may not know me personally, but every day you use the work that I and my colleagues created. In 1991, I was the Campus Network Manager at the University of Utah. In 1993, as an expert, I was invited by the **State of Utah**, to come help build, and support their network.

We worked many late nights to resolve problems in the State's network. My energy and health seem almost endless. Later, I was invited to improve the quality of Thiokol's Network. After the Challenger Shuttle Disaster, Thiokol employees made a commitment to be **frank** and **open**.

Senators, let me be frank now. Disabled patients have died because of the adverse impact of Insurance Discretionary Authority.

For some disabled, life improving medical treatment is available, but they cannot afford it, because they never received a claim. Others suffer severely, till chronic illness complications, limit life functions bit by bit.

Consider the discretionary clause impact on patients. *Georgetown University* and *The State of Texas* reported, "When the court used an *arbitrary and capricious* standard of review, patients prevailed in only 28% of the disability cases, compared to prevailing in 68% of cases reviewed *de novo*."

Only 28% means, in states allowing discretionary clauses, the net effect is insurance collects all the premiums, most disabled patients suffer in poverty, and the state carries most of the burden in social programs. A 2% higher premium is a wise investment for a 3x likelier benefit.

Imagine the mess, if every government contract was written by the supplier, containing a discretionary authority clause, giving the supplier sole decision power, and the courts without *de novo* review power.

There are profitable and affordable insurance models with very good customer claims satisfaction. Consider the Consumer Reports Customer Survey, showing above average satisfaction, with claims paid by 3 car insurance companies.

My family has been painfully impacted also. After always paying a LTD premium on time, my family suffers through repeated discretionary excuses, and denials resulting in lack of funds for basics. I deeply suffer a chronic disabling illness that unpredictably fluctuates.

Finally, this issue is worth good legislation. Consider statistically the public interest, "In Maryland, 21.2% of persons between the ages of 45-64 ... reported experiencing a disability in 2006." In 1917, the young & strong were most effected, disabled, and many died of Avian Bird Flu. This Maryland example means, the likelihood is more than 1 in 10 that someone in this room will be affected.

Let us be frank, current Discretionary Authority Clauses are "The fox guarding the hen house. "

Please protect your family, neighbors, and the public by taking back your power to regulate, and the courts power to review cases.

Please ban the use of Discretionary Authority Clauses as 25 states have already.

Thank you for the hearing. Feel free to ask for supporting information. I am happy to answer any questions.